

Application No. 10/742,892
Amendment dated December 6 2005
Response to Official Action of June 6, 2005

RECEIVED
CENTRAL FAX CENTER
DEC 06 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. 10/742,892

Confirmation No. 7096

Inventor: LAYFIELD, Jack et al

Filing Date: 23 December 2003

Title: MODULAR PREFABRICATED SPA

Examiner: PHILLIPS, Charles E.

Group Art Unit: 3751

Docket: 039209-0002US

December 6, 2005

Commissioner of Patents and Trademarks
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This communication is filed in response to the Office Action mailed June 6, 2005 as Paper No. /
Mail Date 20050602.

REMARKS

Claims 1 to 46 are currently pending in the subject patent application.

In the Official Action, the Examiner raised an objection to the subject patent application for being directed to a plurality of distinct inventions, contrary to 35 USC 121.

The Examiner identified the following five inventions:

- I. Claims 1 to 10: directed to a modular spa.
- II. Claims 11 to 22: directed to a spa shell

Application No. 10/742,892
Amendment dated December 6 2005
Response to Official Action of June 6, 2005

- III. Claims 23 to 26: directed to a method of fabricating a spa shell
- IV. Claims 27 to 45: directed to a spa kit
- V. Claim 46: directed to a method of assembling a modular spa

The Applicant disagrees with the imposed restriction, and provisionally elects Claims 11 to 22, with traverse.

Inventions are not considered distinct *inter alia* if they are connected in at least one of design, operation or effect (MPEP 802.01). Each of independent Claims 1, 11, 23, 27 and 46 recite a support member integrally molded with the spa shell. Accordingly, independent Claims 1, 11, 23, 27 and 46 are all connected in design.

Further, even if inventions are considered independent and distinct, restriction is improper if the search and examination of all the claims in the patent application could be made without serious burden on the Examiner (MPEP 803). The Applicant notes that the Examiner classified Claims groups I, II, IV and V under general Class 4. Although the Examiner classified each of these Claims groups under a different sub-class, the Examiner would not need to search sub-classes of this common general Class if the search of the general Class did not locate any pertinent art. Accordingly, the Applicant submits that the requirement to conduct a search for each of the Claims groups would not necessarily impose a serious burden on the Examiner.

In view of the foregoing, the Applicant submits that the restriction under 35 USC 121 was improper, and requests reconsideration of same.

Respectfully submitted,
HEENAN BLAIKIE LLP

By  _____

Robert Graham
Reg. No. 43,430
Tel: 416-360-3524